IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/07/2004

CORAM

THE HONOURABLE Mr.JUSTICE V.KANAGARAJ

C.R.P. (P.D.) No. 429 of 2004
and
C.M.P.No. 4518 of 2004

1.Kuppusamy Naidu
2.Narashimulu
3.Neelammal
4.Sarojini ... Petitioners

-Vs-

Kesavalu Naidu ... Respondent

Civil Revision Petition to set aside the order and decree dated 18.12.2003 made in O.S.No.398 of 1996 on the file of the Court of District Munsif, Ponneri.

!For petitioners ... Mr.R.Karthikeyan

^For Respondent ... Mr.T.Karunakaran

:O R D E R
The above Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the order and decree dated 18.12.2003 made in O.S.No.398 of 1996 on the file of the Court of District Munsif, Ponneri.

2. Today, when the above Civil Revision Petition was taken up for consideration in the presence of the learned counsel for the petitioners and that of the respondent as well, what this Court is able to assess is that it is a suit filed by the petitioners for declaration of the title, consequential injunction and for delivery of property; that at the time of trial, when the petitioners attempted to mark a document, which is listed No.3 in the list of documents and exhibited in the typed-set-of-papers here, the otherside strongly objected to allowing of the said document to be marked by the Court, as a result of which, the trial Court having considered the merit of the said document, citing a judgment of this Court reported in 2001-1-LW-257, wherein, among other things it has been held, that if the family arrangement is reduced to writing and and if it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

3. Admitting the proposition held by the learned Judge of this Court, on the part of the learned counsel for the petitioners it would be argued that, for those purposes, which are mentioned therein in para 3 of the said judgment the document is not at all attempted to be marked, since basically the suit filed by him is not for partition and separate possession or for such other relief. But only for making use of the same for collateral purposes of proving the surrounding circumstances encircling the coming into being of such a document regarding the case registered by him and therefore, would pray to allow the above Civil Revision Petition filed against the order passed by the lower Court.

4. On the part of the learned counsel for the respondent, he would strongly oppose the allowing of the above Civil Revision Petition on ground that since within the parameters of the Registration Act, such a document cannot be permitted to be marked in order to prove its contents.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the case of the petitioners is that the particular document is marked only for collateral purposes and not for proving the contents of the document in support of the case of the petitioners. On the otherhand, it is feared and apprehended on the part of the respondent that if this document, which is in the form of a family arrangement neither stamped nor registered properly, it would prejudice the interest of the defendant in the suit and on such grounds would oppose the application.

6. It must be spelt out that once the document is allowed to be marked, it cannot be construed that the contents of the said document should be taken for granted by the Court as it is avered in it. Even, if the document is allowed to be marked, it is up to the Court to go into the aspects related to the said document in the context of the case put up and the point urged to be proved and therefore, disallowing the document to be marked, even for considering the same for collateral purposes to prove some other point not regarding those contents alone, the petitioners will become bereft of the opportunity to prove such points, which are necessary to prove the case regarding the facts and circumstances and therefore, from the very nature of the document it could be construed that some family arrangements have been made and the suit is not one for either partition or separate possession, but for declaration and injunction and that only for collateral purposes the document could be used and therefore, this Court is of the view to permit the petitioners to mark the said document only to make use of the same for collateral purposes and therefore, no injury or damage would be caused nor any prejudice would be caused to the otherside and therefore, instead of outrightly rejecting the plea of the petitioners restraining them from even marking the document for such specific purposes is undesirable in the circumstances of the case and it is only desirable to permit the petitioners to mark the same only to make use of the same for collateral purposes, within the frame work of law and for nothing else and hence, the following order:

In result,
(i) the above Civil Revision Petition subject to the

observation made in the preceding paragraphs stands allowed;
(ii) the fair and decretal order dated 18.12.2003 made in
O.S.No.3 98 of 1996 on the file of the Court of District Munsif, Ponneri, is
set aside;
(iii) consequently, C.M.P.No. 4518 of 2004 is closed;
(iv) there shall be no order as to costs;
(v) a further direction is given to the lower Court in view of
the fact that it is the suit of the year 1993 to expedite the trial procedure,
so as to deliver the judgment, at any cost not later than three months from
the date of receipt of a copy of this order.

Index : Yes
Internet: Yes

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To
The District Munsif,
Ponneri.